IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2163 of 2004
With
Special Civil Application No. 2818 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYBHAI MANUBHAI THAKKAR & Others.

Versus

STATE OF GUJARAT & Others.

Appearance:
1. Special Civil Application No. 2163 of 2004
MR PREMAL S RACHH for Petitioner No. 1
Mr. KD Pandya, AGP for Respondent No. 1-2,5
NOTICE SERVED BY DS for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/08/2004

ORAL COMMON JUDGEMENT

Rule. Shri Kunjal Pandya, learned AGP waives service of Rule on behalf of the respondents. With the consent of parties, the matter is taken up for Final

Hearing today.

2. By way of these Special Civil Applications under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Deputy Collector, Vadodara dated 28.11.2003 taking over management of the land in question for 10 years under Section 65 of The Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as "the Act"].

3. The petitioners are the owners of land bearing Block Nos. 1186/1185 Paiki of Village Harni, Taluka and District-Vadodara. The said lands were agricultural lands. As it was found by the Deputy Collector that the aforesaid lands are kept uncultivated and kept Padtar for the period between 1996-97 and 2000-2001 proceedings were initiated under Section 65 of the Act. A show cause notice came to be issued against the petitioners and the petitioners were called upon to show cause why management of the lands in question should not be taken over by the State Government for a period upto 10 years exercising power under Section 65 of the Act. A reply came to be filed on behalf of the respective petitioners and submitted that in the nearby area there are residential buildings and cooperative societies and because of the cattle, pigs and other animals it was not possible to cultivate the lands in question and have agricultural crops. It was also submitted that in the nearby area there is a Bharwadvas and slum area, however they are growing castor seeds and flower plants in the said lands. Considering the reply submitted by the respective petitioners the Deputy Collector passed the order dated 28th November 2003 for taking the management of the land in question for a period upto 10 years by holding that there is no cultivation in the lands in question since 1996-1997 and the lands in question are kept as Padtar lands.

4. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Vadodara dated 28th November 2003 in taking over the management of the lands in question for a period of 10 years exercising power under Section 65 of the Act, the petitioners have preferred the present Special Civil Applications.

5. Shri Premal S. Rachh and Shri Parthiv B. Shah, learned advocates appear on behalf of the petitioners and Shri Kunjal Pandya appears on behalf of the State Government. Learned advocates appearing on behalf of the petitioners have submitted that the order passed by the

Deputy Collector is bad in law and while passing the order the authority has not considered the scope and ambit of Section 65 of the Act. They have further submitted that merely because the lands are kept uncultivated and/or kept Padtar that itself will not give any power and/or jurisdiction to the authority to pass an order of taking over management of the land in question upto 10 years. He has further submitted that looking to the facts and circumstances of the case there were valid reasons beyond control of the petitioners for not cultivating the land in question and the said aspect has not been considered by the competent authority. They have further submitted that even looking to the facts and circumstances of the case, the order passed by the Deputy Collector in taking over management of the lands for a period of 10 years (maximum) is not warranted at all and requested to quash and set aside the order passed by the Deputy Collector. On the other hand, Shri Kunjal Pandya, learned AGP has supported the order passed by the Deputy Collector. He has submitted that as it was found by the Deputy Collector on evidence that the lands in question are not cultivated for more than 2 years and were kept as padtar lands the authority was justified in passing the order of taking over management of the lands in question for 10 years and therefore requested to dismiss both the Special Civil Applications.

6. Heard the learned advocates appearing for the parties. Section 65 of the Act reads as under :

"S.65. Assumption of management of lands which remained uncultivated.__

(1) If it appears to the [State] Government that for any two consecutive years, any land has remained uncultivated (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the [State] Government may, after making such inquiry as in thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(2) On the assumption of management, such land shall vest in the [State] Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land :

[Provided that the manager may in

suitable cases give such land on lease as rent even equal to the amount of its assessment;

Provided further that, if the management of the land has been assumed under sub-section (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed.]"

Under Section 65 of the Act, if it appears to the State Government that for any two consecutive years, any land has remained uncultivated or full and efficient use of the land has not been made for the purpose of agriuclture through the default of the holder or any other cause whatsoever not beyond his control the State Government may after making such inquiry as it thinks fit declare that the management of such land shall be assumed. Thus, on enquiry the State Government is to be satisfied that the land has remained uncultivated or full and efficient use of the land has not been made for the purpose of agriculture through default of holder or any other cause whatsoever not beyond his control. Thus, if a land has remained uncultivated due to cause beyond control of its owner, then State Government cannot pass an order of assuming the management of such land. So, unless and until there is a finding, on enquiry by the State Government that the land has remained uncultivated though it was within the control of the original landowner, the management of such land cannot be assumed by the State Government. The State Government, on enquiry, is required to consider whether the land has remained uncultivated due to reasons beyond control of original landowner or within the control of original landowner. A specific finding is required to be made on enquiry by the State Government that the land has remained uncultivated though it was within the control of the original landowner. If, as stated above, on enquiry it is found that land is not cultivated because of reasons beyond his control then the State Government is not justified in assuming the management of land in question. In the present case, from the bare reading of the impugned orders, it is found that there is no finding given by the State Government whether the lands are not cultivated due to the reasons beyond control of the petitioners or not. The State Government has mechanically passed an order by considering and holding that the lands in question have remained uncultivated and Padtar for more than 2 years. The question, with regard to keeping the lands

uncultivated due to the reasons beyond the control of the petitioners, has not been dealt with by the competent authority at all and as the lands in question are kept uncultivated, straightway an order is passed assuming the management of the land in question. This is contrary to the provisions of Section 65 of the Act. Under the circumstances, the impugned order passed by the Deputy Collector, Vadodara, dated 28th November 2003 requires to be quashed and set aside. The matters are required to be remanded to the Deputy Collector, Vadodara for a fresh decision under Section 65 of the Act considering the observations made by this Court hereinabove, and the Deputy Collector is directed to consider and give a specific finding, on enquiry, that the lands have remained uncultivated and padtar due to the reasons/cause beyond the control of the petitioners or not. Such an exercise is required to be done by the Deputy Collector within a period of 3 [three] months from the date of receipt of this order.

7. For the reasons stated above, both the petitions succeeds. The judgment and order passed by the Deputy Collector, Vadodara, dated 28th November 2003 is quashed and set aside. The maters are now remanded to the Deputy Collector for deciding the same afresh in accordance with the provisions of Section 65 of the Act and the observations made by this Court hereinabove. Rule is made absolute in both the Special Civil Applications with no order as to costs.

[M.R. Shah, J.]

rmr.